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10/049,753	10/10/2002	Reiner Class	10573-1U1	7581

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AKIN GUMP STRAUSS HAUER & FELD L.L.P.  
ONE COMMERCE SQUARE  
2005 MARKET STREET, SUITE 2200  
PHILADELPHIA, PA 19103-7013

EXAMINER

SWARTZ, RODNEY P

ART UNIT

PAPER NUMBER

1645

DATE MAILED: 05/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/049,753

Applicant(s)

CLASS ET AL.

Examiner

Rodney P. Swartz, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17February2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 85-126 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 92-98, 100-122, 125 and 126 is/are allowed.
- 6) ☒ Claim(s) 85, 86, 88, 89, 91, 99, 123 and 124 is/are rejected.
- 7) ☒ Claim(s) 87, 90 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

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### **DETAILED ACTION**

1. Applicants' Response to Office Action, received 17February2004, is acknowledged.

Claims 38-84 have been cancelled. New Claims 85-126 have been added.

2. Claims 85-126 are pending and under consideration.

### **Rejections Moot**

3. The rejection of claim 40 under 35 U.S.C. 112, second paragraph, as being indefinite, is moot in light of the cancelation of the claim.

4. The rejection of claims 76-80 under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, is moot in light of the cancelation of the claims.

5. The rejection of claims 46-48 under 35 U.S.C. 112, second paragraph, as being indefinite, is moot in light of the cancelation of the claim.

6. The rejection of claims 57 and 58 under 35 U.S.C. 112, second paragraph, as being indefinite, is moot in light of the cancelation of the claim.

7. The rejection of claims 38, 39, 41, 42, 45, 49 under 35 U.S.C. 102(b) as being anticipated by Zeppezauer et al (U.S. Pat. No. 5,182,257), is moot in light of the cancelation of the claims.

8. The rejection of claims 38, 39, 41, 42, 43, and 45 under 35 U.S.C. 102(b) as being anticipated by Zeppezauer et al (U.S. Pat. No. 5,578,571), is moot in light of the cancelation of the claims.

9. The objection to claims 44 and 50-56 is moot in light of the cancelation of the claims.

### **New Rejections Necessitated by Amendment**

#### **Claim Rejections - 35 USC ' 102**

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10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Newly added claims 85, 86, and 91 are rejected under 35 U.S.C. 102(b) as being anticipated by Zeppezauer et al (U.S. Pat. No. 5,182,257).

Claims 85 and 86 are drawn to a composition comprising only one listed constituent, i.e., a eukaryotic histone H1 protein.

Claim 91 is drawn to the composition of claim 85 further comprising a pharmaceutically acceptable carrier. A "pharmaceutically acceptable carrier" reads on water and therefore would be inherent in the preparation of the composition.

Zeppezauer et al teach a composition which comprises only one listed constituent, i.e., pure histone H1 and a physiologically acceptable carrier (Claim 6; Col. 7, lines 41-60).

12. Newly added claims 85, 86, 88, 89, and 91 are rejected under 35 U.S.C. 102(b) as being anticipated by Zeppezauer et al (U.S. Pat. No. 5,578,571).

Claims 85 and 86 are drawn to a composition comprising only one listed constituent, i.e., a eukaryotic histone H1 protein

Claims 88 and 89 are drawn to a composition comprising pure histone H1 and a second antimicrobial composition comprising either H2A, H2B, H3, H4, or H5 histone.

Claim 91 is drawn to the composition of claim 85 further comprising a pharmaceutically acceptable carrier. A "pharmaceutically acceptable carrier" reads on water and therefore would be inherent in the preparation of the composition.

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Zeppezauer et al teach a composition which comprises  $\geq$ H1, H2A, H2b, and a therapeutically acceptable carrier (claim 1).

13. Claims 123 and 124 are rejected under 35 U.S.C. 112, second paragraph, because of insufficient antecedent basis for the limitation "The medical device of claim 122" in claim 123 and "The medical device of claims 123" in claims 124.

Claims 123 and 124 depend from claim 122 which is drawn to "The wrap of claim 120".

14. Claim 99 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 99 depends from claim 98 and is drawn to the composition of claim 98 in the form of a wound dressing. However, the language of claim 98 is not drawn to any wound dressing, but to a composition of very particular other forms.

### **Claim Objections**

15. Claims 87, 90 objected to because they depend from rejected claims. Appropriate correction is required.

### **Conclusion**

16. Claims 85, 86, 88, 89, 91, 99, 123, and 124 are finally rejected. Claims 87, and 90 are objected to due to dependence from rejected claims. Claims 92-98, 100-122, 125 and 126 appear to be free of the prior art of record.

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM EST.


If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F. Smith, can be reached on (571)272-0864.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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May 10, 2004

  
RODNEY P SWARTZ, PH.D  
PRIMARY EXAMINER